



COMPETITIVE SEALED PROPOSAL **TORNILLO JUNIOR HIGH GYM TO CAFETERIA CONVERSION**

Tornillo Independent School District is accepting Competitive Seal Proposals (CSP)
For the remodeling of the Jr. High Gym Cafeteria

Deliver the Competitive Sealed Proposals at:
Tornillo Independent School District
19200 Cobb Ave.
Tornillo, Texas 79853

Attention: Luis Guerra, Director of Finance or electronically at the district web site at
<https://www.tisd.us>

PROPOSALS SHALL BE PLAINLY MARKED

COMPETITIVE SEALED PROPOSALS: 2023-01

TORNILLO JR. HIGH GYM TO CAFETERIA CONVERSION

19200 Cobb Ave. Tornillo, TX 79853

REQUEST FOR PROPOSALS accepted until 2:00 PM on Friday 9, December 2022

Instructions to offerors, specifications, and terms and conditions are enclosed. Responders should carefully examine all information here provided.

Any proposal received after the specified time, whether uploaded electronically, delivered in person or by mail will be disqualified. This is a turnkey project and proposals shall include all items, unless stated otherwise. The owner reserves the right to reject any or all proposals and to accept any proposal deemed most beneficial to the Tornillo Independent School District; and to waive any formality in the proposal.

I. GENERAL INFORMATION

Without force or limitation, the following scope of work statement provides a general guide to the work contained within and the Project Documents prepared by Countryman and Co.

The project consists of a turnkey work at the school's Jr. High Gym. The work shall include and is not limited to demolition work, plumbing, electrical, mechanical, labor, materials, permits and any other related expenses. A fully functional installation is required at the end of the project. Further verification of completed work will include review of the entire scope of work.

Work should start immediately after the NTP and achieve **substantial completion** by no later than **July 31, 2023**.

The contractor pricing this work is highly recommended to visit the project site before providing the district with a project cost proposal. As per some areas of the gym have already been demo. Coordinate a site visit with Director of Maintenance Rene Estrada. (915)497-4203 or email estradare@tisd.us. to access the buildings is preferred during school hours.

II. INSTRUCTIONS TO OFFERORS

COMPETITIVE SEALED PROPOSALS SHOULD BE SUBMITTED PROVIDING THE ATTACHED REQUIRED INFORMATION AND FORMS:

- A. General information such as organization name, name of contact representative, address, phone, e-mail address, etc.
- B. The District requires all service providers to carry general, auto and umbrella liability, and worker's compensation/ employer's liability insurance coverage. Liability insurance should remain in force during the term of the contract. State the carrier, agent, amount, expiration date and length of time you have maintained coverage.

Workers' compensation – Statutory Limits

Employers liability:	\$ 500,000	each accident
	\$ 500,000	disease – Policy limit
	\$ 500,000	disease – Each employee

General Liability	\$1,000,000	each occurrence
	\$2,000,000	general aggregate
	\$2,000,000	products/completed operations
	\$1,000,000	personal & advertising injury
	\$ 50,000	fire damage legal liability
	\$ 5,000	premises medical payments

District to be named as an additional insured

Automobile Liability	\$1,000,000	combined single limit for bodily and/or Property damage
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District to be named as an additional insured

Excess /Umbrella liability	\$3,000,000	per occurrence
	\$3,000,000	aggregate

- C. In accordance with Chapter 176 of the Local Government Code, effective January 1, 2006, a person or entity that contracts or seeks to contract with the District for the sale or purchase of property, goods, or services (as well as agents of such persons) are required to file a Conflict of Interest Questionnaire with the Records

Administrator. Each covered person or entity who seeks to or who contracts with the District is responsible for complying with any applicable disclosure requirements. The Conflict of Interest Questionnaire may be downloaded from the Texas Ethics Commission's website at: http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm

The Local Government Officers of the Tornillo ISD are as follows:

Ofelia Bosquez- Secretary
Marlene Bullard- Board president
Daniel Dozal- Trustee
Ida Estrada- Vice president
Hector Lopez-Trustee
Maria Kika Saldaña- Trustee
Enrique Vega- Trustee
Rosie Vega-Barrio-Superintendent

- D. The District's prevailing wage determination is attached.
- E. By submitting a proposal, the offeror indicates that they have read and understand the solicitation. The proposal is provided according to the information set forth in this solicitation and the contractor had the opportunity to visit the project site to become familiar with the existing conditions.

Tornillo ISD reserves the right to waive any formalities and/or to accept or reject any or all proposals; and to waive all technicalities and to accept the quote(s) or proposal(s) deemed to provide the best value to the District. Any questions must be directed to Luis Guerra, Director of Finance GuerraL@tisd.us or at (915) 765-3010.

- F. **Payment and Performance Bonds**
Contractor shall furnish bonds in accordance to Chapter 2253 of the Texas Government Code. The payment and performance bonds required may be in one or separate instruments in accordance with applicable law. The amount of each bond provided by the contractor shall be equal to One Hundred Percent (100%) of the cost of the work.
- G. **Monthly payments**
The owner shall pay the contractor on a monthly basis based on the work completed to the end of the month. A 5% retainage fee is withheld on the monthly progress payment. The retainage is released once the project is 100% complete and guarantees, warranties and close-out documents have been provided to the owner.

It will be the contractor's responsibility to submit the Certificate of Payment to the district's representative for review and approval prior to process for payment.

- H. **Change orders**

The contractor shall not perform any extra work until he/she has received in writing the description of the work and a change order or contingency adjustment provided.

- I. Liquidated damages
The contractor and the owner agree that the contractor shall pay the owner **\$300** dollars per day for each day the project is delayed beyond the agreed Substantial Completion date established in the contract.

III. SCOPE OF WORK:

Without force or limitation, the following scope of work statement is a general guide to the work contained within. The district is interested in contracting the conversion to the Jr. High gym into a cafeteria are based on the scope of work and construction documents provided by the architects.

- A. Location of the work
B. Inside Jr High school gym
 - The buildings will continue to be in operations during the work.

C. Access & demolition work:
 - Access to the roof and building will be rear roof ladder
 - Existing improvements such as chain link fence, gates, sidewalks, and landscaping shall not be disrupted during the replacement operations.
 - Utilities lines are in close proximity to the building. The contractor shall exercise caution when driving heavy vehicles within the areas. TISD will try to indicate where the known utility lines are located.

D. Construction Schedule:
 - The work cannot interfere with daily campus activities.
 - Contractor needs to provide TISD a schedule to complete work efficiently and effectively before July 31, 2023.
 - Contractor may need to consider weekend work, TISD Holidays, and Intersession to be able to complete work on time.

E. Permits, Fees and regulations:
 - The contractor is responsible to secure all applicable permits and fees. It is also the contractor's responsibility to request the inspections as required by the authority having jurisdiction over the project. This project is under the jurisdiction of El Paso County Road and Bridges and the El Paso County Emergency Services District #2.
 - The project shall be in strict compliance of the International Building Code and the 2012 Texas Accessibility Standards (TAS) if applicable.

F. Special Considerations:
The contractor providing a cost proposal for this project shall adhere to the construction documents prepared by Countryman and Co.
Building roofs need to be protected during the course of the work. Contractor will be responsible for any damages.
 - All equipment is as specified and installed per the construction documents. Product substitutions are only allowed when approved during the bidding phase.

- The contractor shall consider in their proposal the installation of construction barriers or barricades as safety protection, and will take measures to always maintain dust control.
- TISD recommends the contractor document existing conditions of any areas that may be impacted by this project including but not limited to:
 - Roof
 - Fire alarm panel and fire alarm devices
 - Electrical panels and devices
 - Interior and exterior surfaces
- This project shall NOT interfere with the day-to-day school activities.
- The area shall be clean and maintained on a daily-basis.
- It is the contractor's responsibility to provide and maintain on site supervision at all times during the duration of the project.
- **The contractor is required to exercise caution when demolishing or connecting to existing utilities and systems.**
- All other areas and surfaces impacted by the work shall be restored to their original condition. **This project is a turnkey project.**

IV. SUPPLEMENTARY CONDITIONS

- A. Contract documents
The contractor, subcontractor and material suppliers shall be separately and jointly responsible for the workmanship, operations, appearance and durability of items utilized for the project.

- B. Labor and materials
The contractor is responsible to supply all labor and materials for the project.

- C. Facilities access and protection
The contractor shall determine the work schedule that will provide the most benefit for both the District and the contractor to be able to complete the work on or before July 31, 2023.

The contractor must secure the working area daily. It will also be the contractor's responsibility to install appropriate signage to caution the district's personnel working in and around the facility.

- D. Employee personal protective equipment (PPE)
All contractors' personnel working at the site will be required to wear safety protective gear such as, but not limited to, hard hat, safety shoes, safety goggles, working gloves, etc. and to comply with OSHA requirements.

The contractor, subcontractors, etc., shall have a Policy in place to ensure all personnel is in good health before and during the workday.

- E. Site Security
It will be the contractor's responsibility to control and keep a log of all personnel working on the premises.

The contractor is responsible to store and secure the materials required for the job. The district is not taking any responsibility of items and or materials until the

work is finished and the mechanical equipment is fully functional and turned over to the district.

F. Temporary facilities

It is the contractor's responsibility to provide a portable toilet for the employees working at the site. Clean and service the portable unit(s) at least twice per week and lock it on a daily basis at the end of the working shift. It is also a requirement to provide a hand wash station with water, soap and hand towels.

G. Warranty

Warranties for the work shall be provided according to the specification requirements. The warranties shall be comprehensive. Manufacturer provided warranties prevail.

Neither final Certificate of Payment nor provision in the Contract shall represent acceptance of the work not done in accordance with the contract documents.

H. Close out documents

It is the contractor's responsibility to provide the close out documents and record documents as specified by the engineer. The District requires the close out documents in electronic format and two (2) hard copies in a binder to include but not limited to:

- Project warranty from the general contractor
- Warranties from all trade subcontractors
- Subcontractor / Supplier lists
- No asbestos letter
- No lead letter
- As-built drawings and red line construction plans with site modifications if any on approved plans
- Fire and alarm systems as-builts
- Energy Management as-builts showing controller locations
- An equipment list with the following:
 - ✓ equipment identification (name)
 - ✓ manufacturer
 - ✓ model
 - ✓ serial number
 - ✓ power requirement
 - ✓ warranties offered by the product manufacturer item by item if warranties differ in length of time
- Operation and maintenance manuals
- Original inspection card
- Certificate of Occupancy
- Releases of Liens
- Copies of transmittals for items turned over to the district and/or stock materials

I. Cost Proposal

The cost proposal shall include a detailed cost break down on the format provided. Contractor is not limited to the categories listed; expand the categories as needed.

The contractors shall adhere to the Tornillo Independent School District Prevailing minimum hourly wage rate.

V. QUOTE EVALUATION CRITERIA:

A committee will evaluate the cost proposals on a point system based on the criteria identified below. **It is the contractor's responsibility to provide information to assist the district in the evaluation process.**

Selection criteria:

1.	Cost proposal	45
2.	Proven experience with similar type of projects	10
3.	Past relationship with Tornillo ISD	
	Quality of work	5
	Professionalism and management	5
4.	Past performance	
	Ability to meet the project schedule	10
	Experience with school districts	10
5.	Current References	5
6.	Local Presence	5
7.	Length of time in business	5
Total max		100 points

Tornillo ISD shall select the firm that provides **best value** to the District concurrent with the evaluation criteria listed above. The district reserves the right to increase or decrease the scope of work as needed.

VI. PROPOSAL SHEET

ALL SOLICITATIONS MUST BE SUBMITTED ON THE FORM PROVIDED

The Cost Proposal consists of turnkey conversion of the Jr. High Gym to Cafeteria

Note that the cost proposal shall include a 10% contingency allowance that is an Owner's proprietary fund. Expenses charged to this fund will be authorized by the District's representative. Any unused contingency funds are credit back to the district.

Proposal submitted by (name) _____

Company _____

Signature _____

Position _____

Date _____

VII. REFERENCES

List three references for similar scope of projects & school district projects.

1. Project. - _____

Project description. - _____

School District. - _____

Contact. - _____

Phone number. - _____

2. Project. - _____

Project description. - _____

School District. - _____

Contact. - _____

Phone number. - _____

3. Project. - _____

Project description. - _____

School District. - _____

Contact. - _____

Phone number. - _____

Tornillo Independent School District

Standard Terms and Conditions

1. Seller of Package Goods: Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable; (c) Container number and total number of containers, e.g., box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. Shipment Under Reservation Prohibited: Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

3. Title and Risk of Loss: The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.

4. Delivery Terms and Transportation Charges: All deliveries shall be freight prepaid FOB destination with bid prices reflecting freight and delivery charges to locations within the District, unless otherwise described in the Special Terms and Conditions of this invitation to bid. Buyer agrees to reimburse Seller for transportation costs in the amount specified in Seller's bid, or actual costs, whichever is lower. If the quoted delivery terms do not include transportation costs, provided Buyer shall have the right to designate what method of transportation shall be used to ship the goods.

5. No Placement of Defective Tender: Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. All delivered equipment, materials or merchandise must be new, unused, and in the manufacturer's original packing unless otherwise specified. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender provided; Where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

6. Place of Delivery: The District will issue purchase orders during the bid period. No deliveries will be accepted without a corresponding valid purchase order. Delivery must occur within sixty (60) days after receipt of order (ARO) unless otherwise specified on the District purchase order. Failure to deliver awarded merchandise within 60 days will cancel the order. The place of delivery shall be that set forth on the purchase order. Any change thereto shall be affected by modification as provided for in Clause 20, "Modifications," hereof. The terms of this agreement are "no arrival, no sale."

7. Invoices and Payments:

a. Seller shall submit separate invoices, in duplicate, on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weigh bill when applicable, shall be attached to the invoice. Mail to: Tornillo Independent School District, Attn: Business Services Department, Po box 170 Tornillo Tx. El Paso, Texas 79853. Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the Business Services Department advised of any changes in your remittance addresses.

b. Buyer's obligation is payable only and solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Seller by Buyer.

c. *On Invoices, do not include Federal, State or City Sales Tax. The District will furnish a tax exemption certificate(s), if required.*

d. Seller shall not deliver goods/services with a proper Purchase Order provided by the District as this is a violation of the Texas Prompt Payment Act (Chapter 2251.025 of the Texas Government Code).

e. Seller shall not be entitled to receive payments or amounts under the Contract in excess of the amounts appropriated for the then-current budget period of District. District shall make payment to the Vendor for amounts determined to be properly due, not later than thirty (30) days after its receipt of the Vendor's invoice or as required by the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) or its successor. The maximum interest rate on

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any past due payments by District to Vendor shall be limited to the rate provided by Section 2251.025 of the Texas Government Code or its successor. District may withhold all or part of the compensation as retainage, to the extent required by applicable law, as provided herein, or pending proper completion of delivery and acceptance of the Goods and/or Services represented thereby.

- f. In the event that the Contract is awarded for a term greater than one year, it will be subject to approval at the commencement of each of the District's budget years. Vendor agrees that the District has the continuing right to terminate this Contract without notice at the end of a District budget period in which funds for this Contract are not appropriated. In such event the Contract may be terminated as soon as practicable after the event of non-appropriation or upon 30-days' prior written notice whichever provides the longest notice.

8. **Gratuities:** The buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent, or representative of the Seller, to any officer or employee of the District with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

9. **Special Tools and Test Equipment:** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.

10. Warranty Price:

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

11. **Warranty Products:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern. All equipment items awarded as a result of the bid will be covered by an all parts and labor warranty, including any/all transportation charges, for a minimum period of one (1) year, or as specified in the Special Conditions section of this bid.

12. **Safety Warranty and Provision of Material Safety Data Sheets:** Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time or 30 days whichever is shorter, correction may be made by the Buyer at Seller's expense.

Material Safety Data Sheets (MSDS): The District requires product verification in the form of MSDS reports for all items for which the MSDS are available. MSDS shall be submitted at the time of the bid opening and with each delivery of those materials. MSDS shall be submitted for any product offered as an alternate to the Specifications

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and as a condition precedent to commencement performance under the Contract.

13. No Warranty By Buyer Against Infringements: As part of this contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller issued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing within two weeks after the signing of this agreement. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will save Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringements.

14. Right of Inspection: Buyer shall have the right to inspect the goods at delivery before accepting them.

15. Cancellation: Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies, which Buyer may have in law or equity.

16. Termination: The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be affected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer set forth in Clause 15, herein.

17. Remedies: In the event of default of this Contract by Seller, the Buyer shall have all of, and may exercise one or more of, the following rights and remedies: (a) the right to recover damages; (b) the right to seek injunctive relief; (c) the right to seek declaratory relief; (d) the right to off-set and/or retain from payments otherwise due to seller damages, fees, and costs sustained or incurred by the buyer in connection with such default; (e) the right to terminate this Contract as provided herein; and (f) any of its rights and remedies in law or equity. In no event shall the Buyer's action of terminating this Contract, whether for cause or otherwise, be deemed an election of the Buyer's remedies, nor shall such termination limit, in any way, at law or at equity, the Buyer's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

18. Force Majeure: If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as herein provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean an act or acts of God, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, acts of war, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, arrests, restraint of government and people, civil disturbances, explosions, strikes, lockouts, or other industrial disturbances, breakage or accidents to machinery, pipelines or canal, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party of parties when such settlement is unfavorable in the judgment of the party having the difficulty.

19. Assignment Delegation: No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller

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shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

20. Waiver: No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

21. Entire Contract and Modifications: **THE CONTRACT IS THE FINAL, COMPLETE, AND ENTIRE CONTRACT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER AND SUPERSEDES ALL PRIOR COMMUNICATIONS, ORAL OR WRITTEN, BETWEEN THE PARTIES RELATING TO MATTERS HEREIN. THIS CONTRACT MAY BE MODIFIED OR RESCINDED ONLY BY A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES TO THE CONTRACT BY AND THROUGH THEIR DULY AUTHORIZED AGENTS.** No course of prior dealings between the Parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing Party has knowledge of the performance and opportunity for objection. In the event of any conflict between the separate written Contract and these General Terms and Conditions, the terms of the separate written Contract shall control. If the transaction is governed by a Purchase Order, these General Terms and Conditions shall override any General Terms and Conditions included in the Purchase Order to the extent of any conflict.

22. Examples: When an article of a particular make or trade name is specified, it is done to establish a quality standard and is not intended to eliminate competing articles of equal standard. Vendors are at liberty to quote on substitutions giving complete details along with catalogs showing full specifications of each item. If no substitutions are indicated, it will be assumed that Quotes are based on the specifications provided.

23. Purchases: Any purchases made on behalf of the District shall be made using an approved and signed purchase order. A sample copy of an approved and signed purchase order will be provided upon request. Vendors should not accept verbal orders over the phone, if done it is done at your own risk. The Buyer will not be held liable for and will refuse payment for any goods, merchandise or services delivered by the Seller without an approved purchase order in place.

24. Backorders: The Buyer does not accept backorders and partial payments will not be made. In the event that an item ordered is not currently available then the Seller must contact the Buyer in writing of the backorder status and provide such written proof from the manufacturer. The Buyer will then decide whether to proceed with the order or cancel the order.

24.Repair and Replacement Information. As the situation requires, the Vendor shall provide alternative quotes for both repair and replacement, if appropriate to the request, and in the event that the cost of repair is equal to or greater than seventy-five percent (75%) of the price of a new item shall provide a written recommendation to the District representative regarding the relative merits of repair or replacement of item. Failure to adhere to these requirements may be grounds for the termination of the Contract.

25. Interpretation Parole Evidence: This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

26. Applicable Law: This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.

27. Advertising: Seller shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has

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entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

28. Right to Assurance: Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

29. Venue: Both parties agree that venue for any litigation arising from this contract shall lie in El Paso County, Texas.

30. Conflict of Interest Form (CIQ): Vendors are required to file a Conflict of Interest Questionnaire with the District if a relationship exists between the vendor's company and an officer of the District. Vendors are encouraged to review and become familiar with all disclosure requirements of Texas Local Government Cod Chapter 176.

31. Prohibition Against Personal Interest in Contracts:

a. Any board member which has any substantial interest, either direct or indirect, in any business entity seeking to contract with the district, shall before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation.

b. No employee of the District will have a direct financial interest in any contract with the District, nor will an employee have a direct financial interest in the sale to the District of any land, equipment, supplies and materials, or services. Any violation of this policy will render the contract involved void, unless such contract or sale is approved by the Board of Trustees after full disclosure.

32. Bid Responses:

a. Bidders are encouraged to submit bids on any or all items or services their firms can provide. The award will be made to the lowest responsible bidder who submits a responsible bid, as per bid specifications, which is the most advantageous to the District. All prices are to be your lowest and best net price, F.O.B. Destination, on each item. The unit price for each item offered is to include all applicable discounts. In case of error in extension, unit price will govern.

b. A specific statement of delivery after Receipt of Order (ARO), for each item must be made a part of this bid, and will be a significant determinant in the award for an item where price differences exist if requested on the bid form.

c. Bids will not be accepted and tabulated unless the Vendor Identification portion of the bid form is completely filled out and contains an original signature, in ink, by an authorized representative of the company. Each bid form response shall be typewritten or handwritten in ink. By the signature affixed to the bid form, the bidder thereby certifies that neither the bidder nor the firm, corporation, partnership or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15:01 et.seq. Texas Business and Commerce Code, or the antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. Unsigned bids will be considered a NO BID.

33. Estimated Quantities: It is specifically understood and agreed that the quantities shown on the bid form are estimates, based on projected use, and are for bid purposes only. The District has no commitment to the vendor to purchase a specific quantity until a Purchase Order is issued. Any increase in quantities will be paid for at the quoted bid price, unless required by law to be re-bid. It is further understood that the supplier will not have any claim against the District for the purchase of quantities less than the estimated amount.

34. Product Standards: When a brand name and identification numbers are shown on the bid form, they indicate an acceptable standard, the features of which must be considered when bidding equals. This brand name is used only to establish a quality level, and basic features required. Bids on equivalent or better items are encouraged,

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but must be accompanied with appropriate information for evaluation purposes. Failure to include such information will disqualify the bid on that item. If bidding on other than reference specifications, bid must identify manufacturer, brand, model, etc., of the article being offered. If other than brand(s) specified is offered, complete descriptive information in literature form of each article being bid must be included with the bid. If bidder takes no exception to specifications of reference data, he will be required to furnish brand names, models, etc., as specified.

35. Product Samples and Demonstrations: Samples and/or demonstrations for evaluation purposes must be provided, at no cost or obligation to the District, within ten (10) days of request unless specified otherwise in the Special Terms and Conditions attached to this bid invitation. Samples, if not destroyed in examination, will be returned to the bidder on request, at the bidder's expense. Each sample, when requested, should be marked "Product Sample" and include bidder's name, address, phone number, Bid Number and item number.

36. Awarding Bids: The District in accordance with Section 44.031(B) of the Texas Education Code may consider the following or combination of the following in the awarding of bids and proposals in a weighted manner and in order of importance to project owner and the District and may include the following

- a. Purchase Price
- b. Reputation of the vendor and the vendors goods or services
- c. The quality of the vendors goods or services
- d. The extent to which the goods or services meet the district needs
- e. The vendor's past relationship with district
- f. The impact on the ability of the district to comply with laws and rules relating to historically under-utilized businesses
- g. The total long-term cost to the district to acquire the vendor's goods or services.
- h. Other relevant factor specifically listed in the request for bids or proposals

37. Right to Re-bid: The District reserves the right to re-bid any item contained in this bid invitation, when the fair market value of the item(s) is reduced by a factor of ten (10) percent.

38. Price Per Unit: Unit prices are to be based on the unit of measure requested on the bid form provided such as each, pound, serving, pair, gross, foot, pint, gallon or ounce. Failure to do so will disqualify the bid on that time. All charges, including delivery costs, must be included in the bid price.

39. General Term of Contract: Bid prices must prevail for a period of one year from the date of award unless stated otherwise in the Special Terms and Conditions of the attached Bid Invitation.

The term of any Contract subject to this General Terms and Conditions, will be stated in the written memorialization of the Contract between the Parties; whether, a written Contract or Purchase Order. If no term, is stated in the Solicitation Document, the written Contract or the Purchase Order, the Initial Term will be for a period of one (1) year, with the option extensions at the discretion of the District through an identified formal procurement method.

40. Non-appropriations Clause: This agreement is subject to the appropriation of funds by the District in its budget adopted for any fiscal year for the specific purpose of making payments pursuant to this Agreement for that fiscal year. The obligation of the District pursuant to this agreement in any fiscal year for which this Agreement is in effect shall constitute a current expense of the district for that fiscal year only, and shall not constitute an indebtedness of the District of any monies other than those lawfully appropriated in any fiscal year. In the event of non-appropriation of funds in any fiscal year to make payments pursuant to this Agreement, this Agreement may be terminated.

41. Extensions: The District reserves the option to renew this contract for an additional period(s) if service is satisfactory of one year and if escalation does not exceed five (5) percent per year, or if price reductions are offered; and the renewal is agreed to in writing by both parties.

42. Failure to Honor Bid Prices: Any vendor failing to honor a bid submitted or delivering items not meeting specifications may be removed from the bid list for a period of two (2) years. Items delivered not as specified on the award will be the responsibility of the vendor to recover and credit to the District at no expense to the District.

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43. Failure to Respond to Bid Invitation: Failure to participate in two (2) successive bid invitations will constitute grounds of removal from Tornillo ISDs bid list.

44. Bid Withdrawal: Any request to withdraw a bid prior to the scheduled time of opening must be submitted in writing to the Director of Purchasing.

45. Requests for Interpretation and Clarification: If any bidder is in doubt as to the meaning of any part of this bid document, he may submit to the Purchasing Manager, a written request for an interpretation thereof at least seventy-two (72) hours prior to the hour for opening of bids. The person submitting the request will be responsible for its prompt delivery. An interpretation of the proposed documents will be made only by addendum thereto duly issued, and a copy of such addendum will be mailed or delivered to each company receiving a set of the bid documents. The District will not be responsible for any other explanation or interpretations of the proposed documents. All respondents wishing to contest a recommendation for award of solicitations are required to submit a letter to the Board of Trustees relevant to the bid stating the reason(s) for contesting the recommendation of award of bid(s). This letter will be filed with the Superintendent of schools no less than forty-eight (48) hours prior to the meeting of the Board of Trustees where this particular bid is on the agenda for action.

46. Failure to Meet All Terms and Conditions: Failure to meet all Standard Terms and Conditions will constitute grounds for invalidating the bid(s).

47. Material Deviations: List any deviations from the specifications on the accompanying deviations form. Bidders must list all deviations for products offered as equals to specified products.

48. Penalties for Non-Performance: If at any time, the contractor fails to fulfill or abide by the terms, conditions, or specifications of the contract, the District reserves the right to:

- a. Request a meeting with vendor and a set day notice (at the discretion of the district) for Notice To Correct deficiencies/items
- b. If such corrections are not met, purchase on the open market and charge the contractor the difference between contract and actual purchase price, begin the process of terminating the contract
- c. Reduce such charges from existing invoice totals due at the time, or
- d. Cancel the contract within thirty (30) days written notification of intent and begin the process of submitting performance bond.

49. Bidder Qualification: All bidders shall be required to prove their qualifications concerning the following criteria:

- a. Financial capabilities
- b. Bonding status (to include Payment and Performance Bonding)
- c. Contractual history (references)
- d. Ability to fulfill and abide by the terms and specifications
- e. Quality and stability of product and sources.

50. Felony Conviction Notice/Debarment and Suspension: Texas Education Code requires that "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." In addition, the District cannot enter into a contract with any company that has been debarred or suspended under the terms of Executive Order 12549, "Debarment and Suspension." Certification that the contractor has not been debarred or suspended must likewise appear in the Felony Conviction/Debarment Notice. All bidders are required to complete this form, regardless of status.

51. Insurance Requirements: Insurance required - The contractor shall provide the following insurance certification in the amounts shown and under the conditions noted before any authorization will be given to commence delivery or installation. Certificates of Insurance may be submitted to Tornillo ISD by the successful bidder after the award is made.

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52.

General

1. No work will be commenced until all requirements of this section have been approved by the District in writing. The District will be furnished a certificate of insurance acceptable, prior to the commencement of any work.
2. The insurance shall contain a provision that at least thirty (30) days prior written notice shall be given to the District in the event of cancellation, material change or non-renewal.
3. Insurance shall be underwritten by a company rated not less than B+VII in the Best's latest published guide
4. There shall be a hold harmless agreement in which the contractor assumes liability on the contract and holds the District harmless.
5. The contractor shall purchase and maintain in force the following kinds of insurance and bonds for operations under construction contracts and as specified in each section:

Casualty Insurance

Workers' compensation – Statutory Limits

Employers liability:

<u>\$ 500,000</u>	<u>Each accident</u>
<u>\$ 500,000</u>	<u>Disease – Policy limit</u>
<u>\$ 500,000</u>	<u>Disease – Each employee</u>

General Liability:

<u>\$1,000,000</u>	<u>Each Occurrence</u>
<u>\$2,000,000</u>	<u>General Aggregate</u>
<u>\$2,000,000</u>	<u>Products/Completed Operations</u>
<u>\$1,000,000</u>	<u>Personal & Advertising Injury</u>
<u>\$ 50,000</u>	<u>Fire Damage Legal Liability</u>
<u>\$ 5,000</u>	<u>Premises Medical Payments</u>

District to be named as an additional insured

Automobile Liability \$1,000,000 combined single limit for bodily and/or Property damage

District to be named as an additional insured

Excess /Umbrella liability \$3,000,000 per occurrence

No deletions/exclusions from standard coverage form allowed without formal written consent of the District.

51. **Indemnification** Vendor agrees to indemnify, defend, and hold-harmless District and its trustees, officers, agents, representatives and employees ("Indemnified Parties") from and against, any and all claims, causes of action, liability, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may arise out of or be occasioned or caused by Vendor's negligent act, error, or omission, any agent, officer, representative, employee, seller or sub-consultant of vendor (collectively "Vendor Affiliate") while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the Indemnified Parties, in instances where such negligence causes personal injury, death, or property damage. In the event Vendor and/or a Vendor Affiliate and any Indemnified Party are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the state of Texas, without, however, waiving any governmental immunity available to the District, its employees/officials under Texas law and without waiving any defenses of District its employees/officials under the Texas Tort Claims Act or other Texas law. Vendor shall promptly advise District, in writing, of any claim or demand against an Indemnified Party, Vendor and/or a Vendor Affiliate known to Vendor, related to or arising out of activities of Vendor and/or a Vendor Affiliate under this Contract. The provisions of this Section are solely for the

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benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

52. **Intellectual Property Rights Indemnification.** Vendor shall INDEMNIFY, DEFEND, AND HOLD HARMLESS the Indemnified Parties (as defined above) harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and costs of defense) for infringement of any patent, copyright or similar property right including, but not limited to, misappropriation of trade secrets and any infringement, by Vendor and/or a Vendor Affiliate (as defined above) in connection with any license provided, any deliverable or any service furnished hereunder, and used by either District or Vendor and/or a Vendor Affiliate within the scope of this Contract (unless said infringement results directly from Vendor's and/or a Vendor Affiliate's compliance written standards or specifications provided by an Indemnified Party).

53. Confidential/ Proprietary Information:

Vendor understands that, during the term of this Contract, Vendor will have access to certain information belonging to the District and designated as confidential by the District or not generally known by non-District personnel (collectively, the "Confidential Information"). During the term of this Contract and at all times thereafter, Vendor shall not, without the prior written consent of the District, do any of the following, directly or indirectly:

(a) use any of the Confidential Information for Vendor's own purposes or for the purposes of any person or entity other than the District; and/or (b) disclose any of the Confidential Information to any third party, except as reasonably and in good faith required in connection with performance of this Contract by Vendor. Vendor further shall take all steps necessary to prevent disclosure of Confidential Information by any other person or entity, during the term of this Contract and at all times thereafter, without the prior written consent of the District. All data, disks, lists, financial records, other records, documents, property, information, specifications, and materials of the District relating to the Goods and/or Services provided to Vendor during the term of this Contract, as well as all copies thereof (collectively the "Materials"), shall be and remain the sole and exclusive property of the District. None of the Materials shall be retained by Vendor, or shall be transmitted to anyone at any time, either now or in the future, except as reasonably and in good faith required in connection with performance of this Contract by Vendor. Upon termination of this Contract, or upon request by the District, Vendor shall promptly return the Materials to the District. The Materials are included within the definition of Confidential Information.

54. **Public Inspection of Procurement Records:** Records relating to bids, quotes, or contract may be subject to disclosure pursuant to the Texas Public Information Act Section 552.001 et. seq. of the Texas Government Code. To the extent any of the Goods and/or Services under the bids, quotes, or contracts with the District involve the exchange or creation of Public Information as defined by such Act, the Vendor shall make any such information, not otherwise exempted from disclosure under such Act, available in writing and electronically in Microsoft Word, Microsoft Excel and or Adobe Acrobat.

55. **Standard of Care.** If the Services are performed by a non-professional Vendor, Vendor represents, covenants, and warrants that it will devote its good faith, best efforts in provision of the Services and will provide the Services with reasonable care and skill and in a good and workmanlike manner. If the Services are considered Professional Services, the Vendor further represents, covenants and warrants that it will provide the services using the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the same local. Services will be provided in a manner consistent with industry standards and will conform to the required specifications set out herein, and shall be delivered in compliance with all applicable laws, rules, regulations, procedures and consistent with industry standards.

56. **Federal Edgar Provisions.** Vendor acknowledges in the event federal funds are utilized to fund the Goods and/or Services delivered under the Contract, Vendor will abide by all applicable federal laws, rules, and regulations, executive orders, and policies, procedures and directives applicable to the Contract, including but not limited to the following:
57. **Contractual Remedies.** Vendor agrees that it will comply with all administrative, contractual, legal remedies sanctions and penalties for violation or breach which are included in this Contract.
58. **Wage and Hour Requirements.** To the extent that this Contract involve the employment of mechanics or laborers, Vendor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29

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CFR Part 5). Which requires Vendor to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. This provision will not apply to the District's purchases from vendor of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

59. **Clean Air Act and EPA.** Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 -7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387) and agrees to promptly notify the District of any violation.

60. **Debarment and Suspension.** Vendor has certified that neither the Vendor nor its principals were listed on the government-wide exclusions in SAM, that neither the Vendor nor its principals are debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549 at the time this Contract was executed. Vendor further agrees on behalf of itself and its principals, to immediately provide written notification to the District if, at any time following execution of this Contract, Vendor or one of its principals learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, or if Vendor or one of its principals is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Failure to notify the District of erroneous information within five (5) business days of change in circumstances shall be grounds for immediate termination, but termination of Vendor shall not be an election of remedy by the District.

61. **Byrd Anti-Lobbying Amendment,** 31 U.S.C. § 1352. Vendor confirms its certification to the District that:

no Federal appropriated funds have been paid or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Vendor further certifies that if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Vendor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Vendor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., providing administrative remedies for false statements, apply to this certification and disclosure, and that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Finally, Vendor agrees that it will require that the language of this certification be included in the award documents for all lower-tier contractors it hires, and that it will ensure that all subcontractors make the same certification in connection with work done under the Contract. The certification in this Section is a material representation of fact upon which the District has placed its reliance.

62. **Compliance with Mandatory Provisions of State Energy Conservation Plan.** Vendor shall comply with the all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201), if any.

1Compliance with Solid Waste Disposal Act. If the District purchased the same item or items from the Vendor under this Contract, which were purchased by the District during the preceding fiscal year, and the prior purchase exceeded \$10,000, Vendor agrees that it will comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, where applicable, and that it will provide information and certifications required by the District confirming estimates and otherwise evidencing such compliance.

63. **Equal Employment Opportunity Clause.** Vendor represents, warrants and certifies that, during the performance of the Contract;

(i) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex,

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sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination

(ii) it will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) it will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Vendor's legal duty to furnish information.

(iv) it will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) it will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) it will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) in the event of Vendor's non-compliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) it will include the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Vendor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Vendor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect its interests.

63. **Termination for Convenience.** Notwithstanding any provision to the contrary contained in this Contract if Federal Funds are used to fund the purchase represented by this Contract, the District, reserves the right to terminate this Contract for convenience. In such event, the District agrees, that it will be responsible for all charges with respect to periods prior to the termination.
64. As per House Bill 89, pursuant to Title 10, Subtitle F, Chapter 2271, of Government Code, the vendor will certify through proper document request, that it does not and will not refuse to deal with, terminate business activities with, or otherwise take any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, unless the action taken for ordinary business purposes.

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EDGAR CERTIFICATIONS

2CFR Section 200 REQUIRED PROVISIONS

ADDENDUM FOR CONTRACT FUNDED BY U.S. FEDERAL GRANT

The following certifications and provisions are required and apply only when the District expends federal funds for any contract resulting from this procurement process. Accordingly, the parties agree that the following terms and conditions apply to the Contract between the District and vendor ("Vendor") in all situations where Vendor has been paid or will be paid with federal funds, and only to the extent applicable to the contract type or dollar amount:

**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER
FEDERAL AWARDS**

APPENDIX II TO 2 CFR PART 200

(A) Education Department General Administrative Regulations For all purchases with federal grant funds, the District is required to comply with the federal regulations, Education Department General Administrative Regulations (EDGAR) related to the purchasing of goods and services. [2 CFR 200.317-200.326] Effective July 1, 2018. When the District seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply to the procurement, in addition to those under state law. This RFP includes the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"). The District requires all Vendors to complete and execute the EDGAR CERTIFICATION FORM when requested do so as a requirement of the procurement documentation process when federal funds are the source of project funding.

(B) *[Applicable ONLY to FORMAL contracts in excess of \$250,000.]* **Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C.1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.**

Pursuant to Federal Rule (A) above, when the District expends federal funds, the District reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

(C) *[Applicable ONLY to contracts in excess of \$10,000.]* **Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement.**

Pursuant to Federal Rule (B) above, when the District expends federal funds, the District reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. The District also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if the District believes, in its sole discretion that it is in the best interest of the District to do so. Vendor will be compensated for work performed and accepted and goods accepted by the District as of the termination date if the contract is terminated for convenience of the District. Any award under this procurement process is not exclusive and the District reserves the right to purchase goods and services from other vendors when it is in the District's best interest.

(D) *[Applicable ONLY to federally assisted construction contracts.]* **Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41**

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CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Pursuant to Federal Rule (C) above, when the District expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

(E) [Applicable ONLY to prime construction contracts in excess of \$2,000 where federal funds are being used for the project] Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. *The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).* The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(F) [Applicable ONLY to contracts in excess of \$100,000 involving mechanics or laborers.] Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when the District expends federal funds, Vendor certifies that Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by the District resulting from this procurement process.

(G) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants,

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Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by the District, Vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

(H) [Applicable ONLY to contracts in excess of \$250,000.] Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by the District, Vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by the District, Vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, Vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

(J) [Applicable ONLY to contracts in excess of \$100,000] Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by the District, Vendor certifies that during the term and after the awarded term of an award for all contracts by the District resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

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- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

(K) Procurement of Recovered Materials – When federal funds are expended, the District and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Pursuant to Federal Rule (J) above, when federal funds are expended by the District, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c)(3)(A)(i)), the vendor certifies, by signing this document, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

(L) Certification of Domestic Preferences for Procurements – As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of 2 CFR Part 200.322, “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber.

Pursuant to Federal Rule (K) above, when federal funds are expended by the District, vendor certifies, by signing this document, that to the greatest extent practicable vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(M) Ban on Foreign Telecommunications – Federal grant funds may not be used to purchase equipment, services, or systems that use “covered telecommunications” equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. “Covered telecommunications” means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Pursuant to Federal Rule (L) above, when federal funds are expended by the District, vendor certifies, by signing this document, vendor will not purchase equipment, services, or systems that use “covered telecommunications”, as defined by 2 CFR §200.216, equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

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RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by the District for any contract resulting from this procurement process, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When the District expends federal funds for any contract resulting from this procurement process, Vendor certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

CERTIFICATION OF EQUAL EMPLOYMENT STATEMENT

It is the policy of the District not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

[Only Applicable to Contracts funded under the National School Lunch Program] The Buy American regulations promulgated by USDA and TDA require public school districts to purchase domestically grown and processed food to the maximum extent practicable as noted and provided in Title 7 CFR 210.2 (d). The food product must consist of agricultural commodities that were grown domestically, unless an authorized exception exists and has been approved by the District.

CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336

Vendor agrees that the District's Inspector General or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

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STATEMENT OF COMPLIANCE WITH CONE OF SILENCE

By the signature below, the signatory for the bidder certifies the following statements:

1. Have you or the firm, corporation, partnership or institution represented by the signatory or anyone acting for the firm bidding on this project had any contact with any District employee, other than the staff of the Procurement Services Department during the Cone of Silence period of this bid?

Yes_____ No_____ If yes, please provide name of District employee, dates of contact, and reason for contact.

2. Have you or the firm, corporation, partnership or institution represented by the signatory or anyone acting for the firm bidding on this project had any contact with any Tornillo ISD Board Member during the Cone of Silence period of this bid?

Yes_____ No_____ If yes, please provide name of Board Member, dates of contact, and reason for contact.

3. Did you or the firm, corporation, partnership or institution represented by the signatory or anyone acting for the firm bidding on this project assist in the development of specifications, scope of work, or provide presentations or education/training to District Employees or Board members for this bid?

Yes_____ No_____ If yes, please provide name of District employee or Board Member and dates of any meetings, discussions, presentations, or education/trainings.

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CERTIFICATE OF INTERESTED PARTIES – FORM 1295

Under certain circumstances, the District is required to comply with Texas Government Code, Section 2252.908, Disclosure of Interested Parties. If the District is entering into a contract with a “business entity” (defined below) which requires action by the **Board of Trustees or which has a value of the contract is at least \$1 million**, Section 2252.908, requires the District obtain a Disclosure of Interested Parties Form 1295 from the contracting business entity that, at the time the contract is signed binding the parties. The form requires disclosure of each “interested party” to the contract of which the contracting business entity is aware, and must be signed by an authorized agent of the contracting business entity acknowledging that disclosure is made under oath and under penalty of perjury.

Since the Vendor qualifies as a “business entity” and the contract to be entered for this solicitation is for a value greater than

\$1 Million or requires action or a vote by the Board of Trustees the selected Vendor will be required complete and submit Form 1295. **THE FORM MAY ONLY BE FILED ELECTRONICALLY.**

Form 1295 must be submitted on the form promulgated by the Texas Ethics Commission and in compliance with the Commission’s rules, at the time the business entity submits the signed contract to the District. The form must be completed electronically and the process for doing so can be found at the Texas Ethics Commission website at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. The filing process will include:

1. **Completing Form 1295 electronically** with the Texas Ethics Commission using the online filing application. The portal for completion of Form 1295, instructions for completion and answers to Frequently Asked Questions can be found at the Texas Ethics Commission website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. **Printing a copy of the completed form** (make sure that it has a computer-generated certification number in the “Office Use Only” box)
3. Having an authorized agent of the business entity **sign the form before a notary public.**
4. **Submitting** the completed, signed and notarized Form 1295, showing the certification of filing with your signed contract. **Effective January 1, 2018, the person filing a 1295 needs to complete an "unsworn declaration".**

The District will then acknowledge the receipt of the filed Form 1295 by notifying the Texas Ethics Commission of the receipt of the filed Form 1295 no later than the 30th day after the date the contract is executed by the District, binding all parties to the Contract. Within seven (7) business days after receiving acknowledgement from the District the Texas Ethics Commission will post the completed Form 1295 to its website.

A copy of the current Form 1295 is attached hereto for your reference. You are encouraged to contact your own legal counsel with any questions you may have about the process.

The following **definitions** apply:

1. **“Business Entity”** means an entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. TEX. GOV’T CODE §2252.908(1).
2. **“Interested Party”** means a person:
 - a) who has a *controlling interest* in a Business Entity with whom the District contracts; or
 - b) who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the Business Entity. TEX. GOV’T CODE § 2252.908(3).
3. **“Controlling interest”** means:
 - a) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
 - b) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
 - c) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
4. **“Intermediary”** means a person who actively participates in the facilitation of the contract or negotiating

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the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- a) receives compensation from the business entity for the person's participation;
- b) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- c) is not an employee of the business entity. TEX. ETHICS COMM. RULE 46.3(e).

CERTIFICATE OF INTERESTED PARTIES

(FILE ONLINE AT WWW.ETHICS.STATE.TX.US/FILE)

FORM 1295

OFFICE USE ONLY

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

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2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Tornillo ISD Bid No. (Insert No. here)

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.

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6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20_____.
(month) (year)

Signature of authorized agent of contracting business entity(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

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